

IN THE IOWA DISTRICT COURT FOR CLINTON COUNTY

STATE OF IOWA, ex rel., IOWA)	LAW NO. _____
DEPARTMENT OF NATURAL)	
RESOURCES (99AG23542),)	
)	
Plaintiff,)	
)	
vs.)	
)	
MOBILE WORLD, L.C., and)	PETITION AT LAW
R. VICTOR HANKS,)	
)	
Defendants.)	

COMES NOW Plaintiff State of Iowa, ex rel., Iowa Department of Natural Resources (“DNR”), and for its claims against Defendants Mobile World, L.C., and R. Victor Hanks, states as follows:

Introduction

1. The State of Iowa seeks assessment of civil penalties, issuance of a permanent injunction, and collection of unpaid administrative penalties against Defendants Mobile World, L.C. (“Mobile World”) and R. Victor Hanks (“Hanks”), for asbestos handling, open burning, solid waste and wastewater disposal violations committed at its manufactured home development in Camanche, Clinton County, Iowa.

Parties

2. The State of Iowa is a sovereign state of the United States of America and brings this action on behalf of the DNR, a duly constituted agency of the State of Iowa pursuant to Iowa Code section 455A.2.

3. Mobile World is a limited liability company organized under the laws of the State of Iowa, with its home office at 4000 E. Kimberly Road, Davenport, Iowa 52806.

4. R. Victor Hanks is an individual and managing member of Mobile World, residing at 3580 - 7th Street, Moline, Illinois 61265.

Jurisdiction

Air Quality

5. Iowa Code chapter 455B, Division II, Part 1 (sections 455B.131 to 455B.151) establishes the State's air quality program within the jurisdiction of the DNR.

6. The Environmental Protection Commission ("EPC") is authorized to adopt rules related to the evaluation, abatement, control, and prevention of air pollution. Iowa Code § 455B.133(2) (2001). The air quality rules adopted by the EPC are contained in 567 Iowa Admin. Code chapters 20-29.

7. The United States Environmental Protection Agency has established emission standards, codified at 40 C.F.R. Part 61, Subpart M, (40 C.F.R. sections 140-157), for asbestos which is a hazardous air pollutant regulated pursuant to Section 112 of the Clean Air Act. These standards for asbestos and other hazardous air pollutants are called the National Emission Standards for Hazardous Air Pollutants (NESHAPs).

8. The asbestos NESHAP was adopted by reference by the EPC and is codified at 567 Iowa Admin. Code 23.1(3).

9. The owner or operator of a demolition or renovation activity is required to thoroughly inspect the affected facility for the presence of asbestos prior to the commencement of the demolition or renovation. 40 C.F.R. § 61.145(a).

10. The owner or operator of a demolition or renovation activity is required to provide the DNR with prior written notice of intention to demolish or renovate. 40 C.F.R. § 61.145(b).

11. Each owner or operator of a demolition or renovation activity is required to comply with the procedures contained in 40 C.F.R. section 61.145(c) for controlling asbestos emissions. 40 C.F.R. § 61.145(c).

12. Each owner or operator of a demolition or renovation activity is required to remove all regulated asbestos containing material from the facility being demolished or renovated before any activity begins that would break up, dislodge, or similarly disturb the material or preclude access to the material for subsequent removal. 40 C.F.R. § 61.145(c)(1).

13. When disposing of asbestos-containing waste material, each owner or operator of a demolition or renovation activity shall discharge no visible emissions to the outside air during the collection, processing (including incineration), packaging, or transporting of any asbestos-containing waste material generated by the source, or use one of the emission control and waste treatment methods specified in 40 C.F.R. section 61.150(a)(1)-(4). 40 C.F.R. § 61.150(a).

14. All asbestos-containing waste material shall be deposited as soon as practical by the waste generator at a waste disposal site operated in accordance with the provisions of section 61.154 or an EPA site that converts asbestos-containing material into nonasbestos material. 40 C.F.R. § 61.150(b).

15. Any person is prohibited from allowing, causing, or permitting open burning of combustible materials, unless a variance has been granted under 567 Iowa Admin. Code 23.2(2),

or one of the exemptions listed in 567 Iowa Admin. Code 23.2(3) applies. 567 Iowa Admin. Code 23.2(1).

16. The director of the DNR may issue orders consistent with rules to cause the abatement or control of air pollution. Iowa Code § 455B.134(9).

17. The DNR may assess administrative penalties for violations of Iowa Code ch. 455B or rules, permits or orders adopted or issued pursuant to Iowa Code ch. 455B. Iowa Code § 455B.109; 567 Iowa Admin. Code 10.

18. The Attorney General, at the request of the DNR, may institute a civil action for injunctive relief to prevent any further violation of an order, permit, or rule, or for the assessment of a civil penalty, not to exceed ten thousand dollars (\$10,000.00) per day for each day such violation continues, or both such injunctive relief and civil penalty. Iowa Code § 455B.146.

Solid Waste Disposal

19. Iowa Code chapter 455B, Division IV, Part 1 (sections 455B.301 to 455B.316) establishes the State's solid waste disposal program within the jurisdiction of the DNR.

20. The EPC is required to establish rules for the proper administration of Iowa Code chapter 455B, Division IV, Part 1, relating to the treatment and disposal of solid waste. Iowa Code § 455B.304. The solid waste management and disposal rules adopted by the EPC are contained in 567 Iowa Admin. Code chapters 100-121.

21. A private agency or public agency shall not dump or deposit or permit the dumping or depositing of solid waste at any place other than a facility permitted by the DNR, unless otherwise provided by rule. Iowa Code § 455B.307(1); 567 Iowa Admin. Code 100.4.

22. The term "private agency" includes individuals and any form of legally

authorized business organization. Iowa Code §§ 28E.2, 455B.301(16).

23. The director of the DNR may issue any order necessary to secure compliance with or prevent a violation of Iowa Code Chapter 455B, Division IV, Part 1, or rules adopted pursuant to that part. Iowa Code § 455B.307(2).

24. The DNR may assess administrative penalties for violations of Iowa Code ch. 455B or rules, permits or orders adopted or issued pursuant to Iowa Code ch. 455B. Iowa Code § 455B.109; 567 Iowa Admin. Code 10.

25. The Attorney General is authorized, on request of the DNR, to institute any legal proceedings necessary in obtaining compliance with an order of the director or prosecuting any person for a violation, of Iowa Code Chapter 455B, Division IV, Part 1, or the rules issued under that part. Iowa Code § 455B.307(2).

26. Any person who violates any provision of Iowa Code Chapter 455B, Division IV, Part 1, or any rule or any order adopted pursuant to that part is subject to a civil penalty not to exceed five thousand dollars (\$5,000.00) for each day of violation. Iowa Code § 455B.307(3).

Wastewater Treatment

27. The Iowa Environmental Protection Commission is authorized to adopt rules relating to the operation of waste disposal systems and the discharge of pollutants into waters of the state pursuant to Iowa Code section 455B.171(1), (2), (3) and (6). The Commission has adopted such rules at 567 Iowa Admin. Code 60-69.

28. Owners of waste disposal systems are required to submit records of operation on a monthly basis to the DNR. 567 Iowa Admin. Code 63.7. A waste disposal system shall not be operated without or contrary to any condition of a permit issued by the DNR. 567 Iowa Admin.

Code 64.3(1). All facilities and control systems shall be operated as efficiently as possible and maintained in good working order, and a sufficient number of staff, adequately trained and knowledgeable in the operation of the facility shall be retained at all times. 567 Iowa Admin. Code 64.7(5)“f”.

29. The DNR director is authorized by Iowa Code section 455B.175(1) to enforce the requirements of Iowa Code chapter 455B, Division III, Part 1, or any rules or standard established or permit issued thereunder, by issuance of an administrative order directing a violator to desist in the practice which constitutes a violation, and to take necessary corrective action to ensure the violation will cease. The director may also impose administrative penalties pursuant to Iowa Code section 455B.109. The director, with the approval of the Iowa Environmental protection Commission, may request the Attorney General to institute legal proceedings pursuant to Iowa Code section 455B.191. Iowa Code § 455B.171(3).

30. The Attorney General is authorized, at the request of the DNR director with approval of the Iowa Environmental Protection Commission (“EPC”), to institute any legal proceedings, including an action for an injunction or temporary injunction, necessary to enforce the penalty provisions of Iowa Code chapter 455B, Division III, Part 1, or to obtain compliance with the provisions of said statutes or any rules promulgated or any provision of any permit issued thereunder. Iowa Code § 455B.191(4).

31. A person who violates any provision of Iowa Code chapter 455B, Division III, Part 1 or any permit, rule, standard, or order issued thereunder shall be subject to a civil penalty not to exceed Five Thousand Dollars (\$5,000.00) for each day of such violation. Iowa Code § 455B.191(1).

Facts

32. Defendant Mobile World, owns and operates a 150 lot manufactured home development known as Buffalo Bill Estates at 3727 - 292nd Street, Camanche, Clinton County, Iowa. Domestic sewage is transported to a wastewater treatment facility consisting of a single cell waste stabilization lagoon operated pursuant to Iowa NPDES Permit No. 6-23-00-6-01. The facility discharges from the lagoon to an unnamed tributary of the Wapsipinicon River. Under the permit, the facility is to operate as a storage/drawdown system, and not continuously discharge. A copy of Iowa NPDES Permit No. 6-23-00-6-01 is attached hereto as Exhibit A, and by this reference made a part thereof.

33. On August 14, 2002, DNR officials inspected Buffalo Bill Estates and observed a large pile of construction debris and garbage including discarded appliances. Defendant Hanks stated that the solid waste originated from another site owned by Mobile World. On August 21 and October 25, 2002, DNR officials notified defendants that the solid waste must be removed and its proper disposal verified with landfill receipts. On February 19, 2003, DNR officials conducted a follow up inspection at the site and observed that significant amounts of the solid waste remained at the facility. The defendants had not furnished any receipts verifying lawful disposal.

34. On April 23, 2003, the director of the DNR issued Administrative Order No. 2003-SW-06 to the defendants, a copy of which is attached hereto as Exhibit B, and by this reference made a part thereof. The Order required the defendants to cease the illegal disposal of solid waste, and immediately remove and legally dispose of the solid waste with receipts to show lawful disposal. Administrative Order No. 2003-SW-06 also assessed an administrative penalty

of Two Thousand Two Hundred Fifty Dollars (\$2,250.00) pursuant to Iowa Code section 455B.109 and 567 Iowa Admin. Code 10.1 - 10.3. The Order was received on April 30, 2003, shown by the return receipt, a copy of which is attached on the last page of the Order. The defendants did not appeal the Order.

35. On June 18, 2003, DNR staff inspected Buffalo Bill Estates. The lagoon berm was overgrown with weeds and small trees. The lagoon was continuously discharging. DNR staff directed that the weeds and trees be cut by August 1, 2003. The defendants did not comply, and after August, 2003, the facility ceased submitting monthly operating reports to the DNR. On September 22, 2003, the certified wastewater operator at the facility resigned.

36. During the June 18, 2003 inspection, DNR officials also observed that the solid waste remained; and in addition, four (4) discarded mobile homes had been left at the site. The DNR officials notified the defendants that the solid waste and trailers must be removed. When DNR officials visited the facility on September 22, 2003, the waste materials and the trailers were still at the site. On December 2, 2003 when DNR officials returned, they observed that the four (4) junk trailers had been burned with metal, ashes, frames and related waste remaining. A portion of the solid waste which had previously been at the site was also burned, and while it appeared that some had been removed, the majority of that solid waste remained. The defendants had not inspected the trailers for the presence of asbestos prior to demolition and did not provide written notice to the DNR of their intention to demolish the trailers.

37. On December 8, 2003, the DNR issued a Notice of Violation to defendants for their failure to complete asbestos inspections and failure to provide written notice to the DNR before demolition. The Notice directed the defendants to test the fire debris for asbestos and

submit the results by December 31, 2003. When the defendants did not furnish test results, DNR officials directed that the asbestos test results be submitted by February 13, 2004. The defendants still did not comply.

38. On February 20, 2004, the director of the DNR issued Administrative Order No. 2004-WW-07 to the defendants, a copy of which is attached hereto as Exhibit C, and by this reference made a part thereof. The Order required the defendants to retain a licensed professional engineer within 30 days to evaluate the wastewater treatment system, submit a plan of action within 90 days for facility improvements, retain a certified operator to operate the wastewater facility, and comply with all monitoring and reporting requirements of the NPDES permit. Administrative Order No. 2004-WW-07 also assessed an administrative penalty of Ten Thousand Dollars (\$10,000.00), pursuant to Iowa Code section 455B.109 and 567 Iowa Admin. Code 10.1 - 10.3. The Order was received on February 23, 2004, as shown by the return receipt, a copy of which is attached on the last page of the Order. The defendants did not appeal the Order.

39. On March 12, 2004, the director of the DNR issued Administrative Order No. 2004-SW-10/ 2004-AQ-12 to the defendants, a copy of which is attached hereto as Exhibit D, and by this reference made a part thereof. The Order required the defendants to cease improper disposal of solid waste, stop any and all open burning, remove and legally dispose of all remaining solid waste with receipts showing proper disposal, and pay the penalty of \$2,250.00 from Administrative Order No. 2003-SW-06. Administrative Order No. 2004-SW-10/ 2004-AQ-12 also assessed an administrative penalty of \$10,000.00 pursuant to Iowa Code section 455B.109 and 567 Iowa Admin. Code 10.1 - 10.3. The Order was received on March 31, 2004,

as shown by the return receipt, a copy of which is attached on the last page of the Order. The defendants did not appeal the Order.

40. On August 19, 2004, DNR officials inspected the Buffalo Bill site. While some waste had been removed, solid waste remained, including debris from the trailers which had been burned. On August 26, 2004, DNR officials notified the defendants that they must complete the cleanup, and submit copies of all disposal receipts, lab analyses and receipts from the asbestos contractor retained to remove the debris.

41. On September 20, 2004, the DNR received a report from the defendants which included asbestos test results from the burn pile. The asbestos test results indicated that 50% chrysotile asbestos was found in the trailer debris which had been burned. The report stated that as a result the entire pile was suspect and should be treated as asbestos. On September 29, 2004, DNR officials notified defendants that they must submit disposal receipts and billing statements from the asbestos contractor who removed the debris from the burned trailers. The defendants have not complied.

42. On December 29, 2004, DNR asbestos NESHAP Coordinator, Marion Burnside, inspected the Buffalo Bill site and observed that debris from the burned trailers remained. Burnside took samples of this debris pile. The asbestos test results indicated 20% chrysotile asbestos.

43. On February 16, 2005, DNR officials inspected the site. Debris from the burned trailers which contained asbestos remained. Other solid waste also remained at the site and it appeared that landscape waste had been piled in one area of the facility.

44. The defendants have failed to retain a licensed professional engineer within 30 days to evaluate the facility and submit a plan for facility improvements. The defendants have operated the facility as a continuous discharge system.

45. The defendants have failed to submit monthly operating reports for the Buffalo Bill Estates facility from August, 2003 through December, 2004.

46. The defendants have failed to remove and properly dispose of solid waste at the Buffalo Bill Estates facility.

47. The defendants have failed to properly handle asbestos-containing materials by, inter alia, failing to provide Notice of Demolition, inspect facilities subject to demolition of asbestos and properly removing asbestos materials from the Buffalo Bill Estates facility.

48. The defendants have failed to pay the administrative penalties referenced in paragraphs 34, 38 and 39, or any accrued interest.

Violations

Wastewater

49. The defendants have failed to retain a licensed professional engineer within 30 days to evaluate the facility and submit a plan for facility improvements in violation of Administrative Order No. 2004-WW-07.

50. The defendants have failed to submit monthly operating reports from August, 2003 through December, 2004, in violation of 567 Iowa Admin. Code 63.7 and 64.3(1), NPDES Permit No. 6-23-00-6-01 and Administrative Order No. 2004-WW-07.

51. The defendants have operated the facility as a continuous discharge system in violation of NPDES Permit No. 6-23-00-6-01 and Administrative Order No. 2004-WW-07.

52. The defendants have failed to pay any part of the Ten Thousand Dollars (\$10,000.00) administrative penalty or any accrued interest in violation of Administrative Order No. 2004-WW-07.

Solid Waste and Air Quality

53. The defendants have failed to remove all solid waste from the Buffalo Bill Estates site, and furnish receipts demonstrating proper disposal in violation of Administrative Order No. 2003-SW-06 and Administrative Order No. 2004-SW-10/ 2004-AQ-12.

54. The defendants failed to inspect the affected facility for the presence of asbestos prior to the commencement of demolition and failed to provide the DNR with written notice of intention to demolish in violation of 40 C.F.R. § 61.145(a) and (b).

55. The defendants failed to hire an asbestos abatement contractor to clean up and dispose of the solid waste in violation of 40 C.F.R. § 61.145(c).

56. The defendants failed to remove all asbestos material from the facility being demolished before any activity begins which would break up, dislodge or similarly disturb the material in violation of 40 C.F.R. § 61.145(c)(1).

57. The defendants have failed to deposit asbestos-containing material as soon as practicable at a waste disposal site in violation of 40 C.F.R. § 61.150(b)(1).

58. The defendants have failed to pay any part of the Two Thousand Two Hundred and Fifty Dollars (\$2,250.00) administrative penalty or any accrued interest in violation of Administrative Order No. 2003-SW-06.

59. The defendants have failed to pay any part of the Ten Thousand Dollar (\$10,000.00) administrative penalty or any accrued interest in violation of Administrative Order No. 2004-SW-06/ 2004-AQ-12.

WHEREFORE, Plaintiff State of Iowa ex rel., Iowa Department of Natural Resources respectfully requests that the Court:

- a. assess a civil penalty against the defendant pursuant to Iowa Code section 455B.191(1) for each day of violation of 567 Iowa Admin. Code 63.7, 64.3(1), NPDES Permit No. 6-23-00-6-01 and Administrative Order No. 2004-WW-07, not to exceed Five Thousand Dollars (\$5,000.00) for each day of violation;
- b. assess a civil penalty against the defendants pursuant to Iowa Code section 455B.307(3) for each day of violation of Administrative Order Nos. 2003-SW-06 and 2004-SW-10/2004-AQ-12, not to exceed Five Thousand Dollars (\$5,000.00) for each day of violation;
- c. assess a civil penalty against the defendants pursuant to Iowa Code section 455B.146 for each day of violation of 567 Iowa Admin. Code 23.1(3), 40 C.F.R. § 61.145(a), 61.145(b), 61.145(c), 61.145(c)(1), 61.150(b)(1) and Administrative Order No. 2004-SW-10/2004-AQ-12, not to exceed Ten Thousand Dollars (\$10,000.00) for each day of violation;
- d. issue a permanent injunction enjoining the defendants from further violations of 567 Iowa Admin. Code 63.7, 64.3(1), NPDES Permit No. 6-23-00-6-01, 150(b)(1), and Administrative Order Nos. 2003-SW-06, 2004-WW-07, 2004-SW-10/2004-AQ-12, 567 Iowa Admin. Code 23.1(3), 40 C.F.R. § 61.145(a)-(c), 61.145(c)(1); and
- e. order the defendants to pay the administrative penalty of Ten Thousand Dollars (\$10,000.00) imposed by Administrative Order No. 2004-WW-07, Two Thousand Two Hundred and Fifty Dollars (\$2,250.00) imposed by Administrative Order No. 2003-SW-06, and Ten Thousand Dollars (\$10,000.00) imposed by Administrative Order No. 2004-SW-06/2004-AQ-12, plus accrued interest pursuant to Iowa Code section 455B.109(3).

Plaintiff further requests such other relief as the Court may deem just and proper and that the Court tax the costs of this action to the defendants.

Respectfully submitted,

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